IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 774 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHIKHUSHA ALISHA

Versus

NARROTTAM PARSOTTAM JETHWA

Appearance:

1. Civil Revision Application No. 774 of 1997

MR DEEPAK M SHAH for Petitioner No. 1

MR BB DESAI for Respondent No. 1-2

MR ANISH B DESAI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 11/08/2004

ORAL JUDGEMENT

The petitioner-original claimant in Motor Accident Claim Petition No.157 of 1983 has filed this Civil Revision Application under section 115 of the Code of Civil Procedure, 1908 (for short, 'the Code') for challenging an order dated 15.2.1997 passed by the learned Motor Accident Claims Tribunal (Main) (for short,

'the Tribunal') at Jamnagar in Misc.Claim Petition No.13/93, under which the learned Tribunal allowed the said application of the first respondent and exonerated him from the liability of payment of compensation awarded to the claimant in MACP No.157 of 1983 by award dated 30.6.1988.

2. It seems that the petitioner herein had preferred the aforesaid MACP No.157/83 for getting award of compensation against both the respondents. It seems that the said tribunal allowed the said petition by judgment and award dated 30.6.1988 and directed that the present respondent shall be jointly and severally liable to pay compensation of Rs.25,250/- with costs and interest and that there shall be joint and several liability against both of them.

3. Thereafter, the first respondent preferred Claim Misc.Application No.13/93 under Order 9 Rule 13 of the Code saying that he was prevented from appearing in the aforesaid petition on good and sufficient cause. After hearing, the learned Tribunal passed an order dated 15.2.1997 setting aside the aforesaid award against the first respondent herein and the tribunal also exonerated the first respondent outright from the liability arising from the award dated 30.6.1988 referred to hereinabove. Feeling aggrieved by the said judgment and order of the learned Tribunal, the petitioner has preferred this revision application before this Court.

4. On receipt of the revision application, notice was issued and thereafter, rule was also issued. In response to the service of notice of rule, Mr B B Desai, learned Advocate has filed his appearance on behalf of respondent no.1. Respondent no.2 has been duly served but he has opted not to appear before this court. I have heard the learned advocates for the parties and perused the papers.

5. It is not much in dispute that the petitioner had obtained an award of compensation on 30.6.1988 in MACP No.157/83. The first respondent did not appear before the tribunal and, therefore, the matter had proceeded ex-parte against him. It is also not much in dispute that the first respondent preferred Claim Misc. Application No.13/93 under Order 9 Rule 13 of the Code for setting aside the ex-parte award. The tribunal allowed the application and passed the aforesaid order which is impugned in this revision application. It is not much in dispute that the first respondent had made an application for setting aside the ex-parte order passed,

under Order 9 Rule 13 of the Code. Order 9 Rule 13 of the CPC clearly provides that in any case in which a decree is passed ex-parte against a defendant, he may apply to a Court by which the decree was passed for an order for setting it aside, and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

6. This means that even when the court is satisfied that the defendant was prevented from appearing in the court, then in exercise of the powers under Order 9 Rule 13 of the Code, the Court would set aside the decree and then would appoint a day for proceeding with the suit. In the present case, we find that the learned Tribunal, while exercising the said power set aside an ex-parte award in favour of the petitioner and against the first respondent.

7. At the same time, the learned Tribunal also proceeded to pass an order for exonerating the first respondent. This is what not contemplated in Order 9 Rule 13 of the Code. Therefore, it is clear that the portion of the order impugned in this revision exonerating the first respondent outright from the liability of the award in question is ex-facie illegal. The learned tribunal was required to fix a day for proceeding ahead with the main Claim Petition which has not been done in the present matter. Therefore, the said order is passed by the learned tribunal without having a jurisdiction to do so. The order is, therefore, ex-facie illegal and without jurisdiction. When the order of the learned tribunal is found to be illegal and without jurisdiction, it would be necessary for this court to interfere with the said order by exercising revisional jurisdiction under section 115 of the said Code.

8. Therefore, the proper course would be to set aside the order impugned in this revision and then to direct the petitioner and respondent no.1 to proceed ahead with respect to MACP No.157 of 1983.

9. For the foregoing reasons, this revision application is partly allowed. The order dated 15.2.1997 passed by the MAC Tribunal (Main) at Jamnagar in Claim Misc. Petition No.13/93 to the extent it exonerates the first respondent from the liability of the payment of

compensation awarded to the claimant in MACP No.157/83 by award dated 30.6.1988, is set aside. MACP No.157/83 is restored to the file qua the first respondent. The petitioner and the first respondent shall appear before MAC Tribunal (Main) at Jamnagar on 15.9.2004. The learned Tribunal shall proceed ahead with the trial of the said MACP in accordance with law. Since the award against the first respondent herein has been set aside, the amount deposited by the first respondent will naturally be withdrawn subject to the ultimate decision before the MAC Tribunal. It is made clear that the order setting aside the award against the first respondent is not being disturbed by this order.

Rule is made partly absolute to the above extent. No order as to costs.
Office shall immediately transmit copy of this order to the aforesaid Tribunal.

[D P Buch, J.]
msp